

REMARKS

Claims 6, 14, and 25-43 are pending in the present application. Claims 6, 14, and 25 are amended herewith. Support for these amendments can be found on at least pages 11-12, and 14. Applicants respectfully submit that no new matter has been added by way of this amendment.

The Examiner objects to the RCE request filed on October 28, 2002 for failing to be directed to the same subject matter and same inventions as presented in the claims of the parent, whose examination on the merits has been constructively elected by original presentation. Applicants respectfully traverse the objection and request withdrawal of the same.

Claims 6 and 14 are amended herewith to incorporate the limitations of independent claim 1 and any intervening claims. Applicants respectfully submit that the objection to claims 6 and 14 have been overcome.

The Examiner argues that claims 25-43 are directed to subject matter never presented and hence never examined in the parent. Applicants respectfully submit that the restriction requirement was limited only to a species of a photo-activating compound, a metal ion chelator, and a species of an oxidizing compound, hydrogen peroxide; therefore, Applicants are not precluded from presenting claims 25-43. Applicant originally presented claim 1 which recited a tooth whitening composition comprising two components: a carrier compound and an oxidizing compound. To overcome the Examiner's rejection and expedite prosecution of this case, Applicants cancelled claim 1 and re-presented the subject matter in new independent claims 25, 32, and 39 with further limitations to a two-part tooth whitening system, the first part comprising a metal ion chelator and a pH-adjusting agent and the second part comprising hydrogen peroxide.

The filing of an RCE requires a "submission" by the Applicants which includes but is not limited to an IDS, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. MPEP §706.07(h)(II); 37 C.F.R. 1.114(c). If a reply

to an Office action is outstanding, the submission must meet the reply requirements of 37 C.F.R. 1.111, which permits newly presented claims and requires the Applicant to make a *bona fide* attempt to advance the application to final action. Applicants canceled claims 1-5 and 7-13 and presented new claims 25-43 to more clearly distinguish over the prior art as more fully argued in its October 28, 2002 response. Applicants respectfully submit that the objection to claims 25-43 has been overcome.

The Examiner objects to the disclosure under 37 C.F.R. 1.71 as being so incomprehensible as to preclude a reasonable search of the prior art by the Examiner. Applicants respectfully traverse the objection and request withdrawal of the same.

Applicants respectfully submit that the specification adequately and clearly describes sorbitol, xylitol, mannitol, maltitol, and lactitol as non-carboxylated polyhydroxy compounds at page 12, lines 21-22. Applicants have further amended the specification by adding in the subject matter of EP 443651, which was incorporated into the specification by reference, to more clearly define non-carboxylated polyhydroxy compounds. Submitted herewith is the Declaration of Christine M. Rebman supporting this amendment. Applicants respectfully submit that the filing date of this application is not affected by this amendment. MPEP §608.1(p)(I)(A)(2).

The arguments made herein should in no way be construed as dedicating any unclaimed or amended subject matter or equivalents to the public, and were done solely to expedite prosecution. Applicants reserve the right to pursue any cancelled or amended subject matter in this or related applications.

It is respectfully submitted in view of the foregoing Remarks that all of the rejections in the Office Action dated March 7, 2003 have been overcome and should be withdrawn.

Applicants respectfully request early and favorable notification to that effect.

If, in the opinion of the Examiner, a phone call may help to expedite prosecution of this application, the Examiner is invited to call Applicant's undersigned attorney at (312) 701-8979.

Respectfully submitted,

MAYER, BROWN, ROWE & MAW,

By: _____

Joseph A. Mahoney
Reg. No. 38,956

MAYER, BROWN, ROWE & MAW
P.O. Box 2828
Chicago, IL 60690-2828
(312) 701-8979
Customer No. 26565
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